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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,  
11  
12 Plaintiff,  
v.  
13 CHANG TAN,  
14 Defendant.

Case No. 2:19-MJ-0955-NJK

**RESPONSE TO GOVERNMENT’S  
BENCH MEMORANDUM  
REGARDING FURTHER  
PROCEEDINGS IN THIS DISTRICT**

15 Defendant, Chang Tan, by and through his counsel, Katherine Tanaka, Assistant  
16 Federal Public Defender, submits this Response to the Government’s Bench Memorandum  
17 Regarding Further Proceedings in this District.

18 **I. INTRODUCTION**

19 Mr. Tan suffers diagnosed mental health disorders. These mental disorders can and  
20 have been previously been managed when Mr. Tan is on his proper medication. On December  
21 16, 2019, Magistrate Judge David Weisman determined that there were conditions that could  
22 be fashioned to reasonably assure the safety of the community and Mr. Tan’s appearance in  
23 court. *See* ECF No. 28 (1:19-cr-0701). Accordingly, he ordered Mr. Tan released to his father.  
24 In addition to ordering Mr. Tan released, the Magistrate Judge ordered that “the medical  
25 physician/personnel at the MCC (Metropolitan Correctional Center) shall provide [Mr. Tan]  
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1 with a three-day supply of prescription medication.” *Id.* These medications were specifically  
2 ordered to address Mr. Tan’s mental health disorders.

3       Unfortunately, during Mr. Tan’s transport, he was not provided with any of his  
4 prescription medications, despite orders from the court. Following the stress of travel and the  
5 lengthy amount of time in custody, and more importantly without his medication, Mr. Tan  
6 became agitated and sought assistance from Pretrial Services. While meeting with Pretrial  
7 Services, Mr. Tan requested he be returned to custody. Without considering Mr. Tan’s mental  
8 state or attempting to contact Mr. Tan’s father (who was outside waiting for Mr. Tan), Pretrial  
9 Services reported Mr. Tan’s requests to the court and had Mr. Tan taken into custody.

10       On December 18, 2019, Mr. Tan made an appearance in front of this Court. In light of  
11 the unique circumstances, Mr. Tan requested a continuance so that efforts could be made to  
12 contact his AFPD in the original district—Northern District of Illinois. Undersigned counsel  
13 has since made contact with Mr. Tan’s AFPD in Chicago. The AFPD has informed  
14 undersigned counsel that he has made attempts to reach out to the AUSA prosecuting Mr.  
15 Tan’s case to try to get a resolution, as well as attempts to set an emergency motion in front of  
16 Magistrate Judge Weisman. The prosecuting AUSA is out of town, and Mr. Tan’s AFPD has  
17 not yet been able to set a hearing in front of Magistrate Judge Weisman.

18       Undersigned counsel has also spoken to Mr. Tan’s father, who is more than eager to  
19 get his son home so that he can get him back on his medication and back under care of his  
20 physician. Undersigned counsel has also spoken to Mr. Tan, who has indicated that, the issue  
21 with his father on December 17, was a result of a misunderstanding, and that it is his desire to  
22 return home.

23       In light of the unusual circumstances in this case—notably the fact that Mr. Tan has  
24 *not* been found to have violated any of his conditions of pretrial release, and the fact that he  
25 suffers from mental health issues that were unmedicated during his transport—Mr. Tan  
26 requests this Court consider modifying the original Magistrate Judge’s order requiring Mr.

1 Tan remain in custody pursuant to Federal Rule of Criminal Procedure 40(c), and order Mr.  
2 Tan released back to his father.

3 **II. ARGUMENT**

4 The government argues that the applicable rule for Mr. Tan's situation appears to be  
5 Federal Rule of Criminal Procedure 40. According to Fed. R. Crim Proc. 40(a), "[a] person  
6 must be taken without unnecessary delay before a magistrate judge in the district of arrest if  
7 the person has been arrested under a warrant issued in another district for . . . violating  
8 conditions of release set in another district."

9 As an initial matter, Mr. Tan stresses that there have not been any allegations or  
10 findings that he violated conditions of his pretrial release. The grounds for the emergency  
11 status hearing held by the original Magistrate Judge was based on information received by  
12 Pretrial Services indicating that Mr. Tan requested he be returned to custody, instead of  
13 residing with his father. *See* ECF No. 34 (1:19-cr-0701). There were no allegations that Mr.  
14 Tan failed to abide by his conditions of pretrial release from Pretrial Services. As a result, the  
15 original Magistrate Judge never made any findings that Mr. Tan violated his conditions—the  
16 order specifies only that the Court had received information "communicated from Pretrial  
17 Services regarding [Mr. Tan's] request to be taken back into custody," and that "[t]he Court,  
18 sua sponte, hereby revokes [Mr. Tan's] conditions of release and band . . . and orders that  
19 [Mr. Tan'] shall remain in custody." *Id.*

20 In light of the highly unusual procedural situation, Mr. Tan requests this Court  
21 exercise its power under Federal Rule of Criminal Procedure 40(c), permitting this Court "to  
22 modify any previous . . . detention order issued in another district" and state its order the  
23 reasons for doing so. Mr. Tan requests that this Court modify the December 17, 2019 order  
24 revoking Mr. Tan's conditions of release and bond because (1) Mr. Tan did not actually  
25 commit any violations of his pretrial release order; (2) Mr. Tan has since rescinded his desire  
26 to return to custody, which was a request that came while he was unmedicated, and resulted

1 from a miscommunication with his father; and (3) Mr. Tan's father is still willing to act as a  
2 third-party custodian for his son. Mr. Tan requests this Court modify the December 17, 2019  
3 Order, which requires Mr. Tan to "remain in custody," to instead permit Mr. Tan to return to  
4 his father's care, until the December 17 Order is resolved. If this Court deems the home of  
5 Mr. Tan's father to be an inappropriate place for Mr. Tan to reside, then Mr. Tan alternatively  
6 requests he be permitted to reside at the Halfway House.

7       If this Court disagrees with Mr. Tan's request to modify the December 17 Order, Mr.  
8 Tan requests this Court instead stay the December 17 removal order for 14 days. Undersigned  
9 counsel spoke to Mr. Tan's AFPD in Chicago, who stated that there had been preliminary  
10 discussions in the charging district regarding transferring Mr. Tan's case pursuant to Federal  
11 Rule of Criminal Procedure 20. Further, undersigned counsel has spoken to the trial chief of  
12 the Federal Public Defender's Office in Nevada, and confirmed that the Office here would be  
13 willing to take Mr. Tan's case, should this transfer be considered. In light of the fact that Mr.  
14 Tan is already in Las Vegas, keeping him here while a transfer is being considered would  
15 preclude unnecessary travel across the country. Unnecessary and extensive travel for Mr. Tan  
16 is particularly burdensome in light of his mental health issues and the particular medication  
17 regimen that he requires. Further, with Mr. Tan remaining in Las Vegas, where both his  
18 father and brother currently reside, Mr. Tan would be able to see and continue to receive  
19 support from his family, both during the holiday season and as his case continues.  
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1 **III. CONCLUSION**

2 For the foregoing reasons, Mr. Tan requests this Court modify the December 17, 2019  
3 Order under Federal Rule of Criminal Procedure 40(c). In the alternative, Mr. Tan requests  
4 this Court stay the removal order while a transfer pursuant to Federal Rule of Criminal  
5 Procedure 20 may be considered.

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7 DATED this 19<sup>th</sup> day of December, 2019.

8 RENE L. VALLADARES  
9 Federal Public Defender

10 By: /s/ Katherine Tanaka

11 KATHERINE TANAKA  
12 Assistant Federal Public Defender  
13 Attorney for Chang Tan  
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**CERTIFICATE OF ELECTRONIC SERVICE**

The undersigned hereby certifies that she is an employee of the Federal Public Defender for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on December 19, 2019, she served an electronic copy of the above and foregoing **RESPONSE TO GOVERNMENT'S BENCH MEMORANDUM REGARDING FURTHER PROCEEDINGS IN THIS DISTRICT** by electronic service (ECF) to the person named below:

NICHOLAS A. TRUTANICH  
United States Attorney  
PATRICK BURNS  
Assistant United States Attorney  
501 Las Vegas Blvd. South  
Suite 1100  
Las Vegas, NV 89101

/s/ Rosana Aporta, Legal Assistant  
Employee of the Federal Public Defender